

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BENNIE A. COOPER, JR.,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-06-881-C
)	
DALE CAGLE, et al.,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff brought the present action pursuant to 42 U.S.C. § 1983, seeking recompense for alleged violations of his constitutional rights while a pretrial detainee. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this action was referred to United States Magistrate Judge Valerie K. Couch. Judge Couch entered a Report and Recommendation on December 12, 2008, to which Defendants Cagle, Briley, Hobbs, Moon, Bowles, and Keller (“Cagle Defendants”) timely objected. Although given additional time, Plaintiff has not objected to the Report and Recommendation.

The facts and law are accurately set out in the Magistrate Judge’s Report and Recommendation and there is no purpose to be served in repeating them yet again. Judge Couch noted that much of the evidence on which the Cagle Defendants relied in support of their Motions for Summary judgment was not competent. The statements in the Special Report were not made on personal knowledge nor were there affidavits or other supporting

documents from which the Court could properly consider the evidence substantiated. As Judge Couch correctly noted, the statements in the Special Report do not satisfy the evidentiary requirements of Fed. R. Civ. P. 56(e). The Cagle Defendants argue that Judge Couch erred in this determination, arguing the evidence from the Report may properly be considered. In the alternative, the Cagle Defendants request leave to file a supplemental report correcting the deficiencies in the Report. The Cagle Defendants' request is denied; merely supplementing the Report will cure some but not all the evidentiary deficiencies noted by Judge Couch. However, the Court will grant the Cagle Defendants leave to file a second summary judgment motion (see LCvR56.1) which must be supported by proper evidence.

Judge Couch also recommended that judgment be entered in favor of Defendant Lehew and that Plaintiff's official capacity claims against the Cagle Defendants be dismissed for failure to state a claim for relief. As noted above, although Plaintiff was granted an extension of time to object to these recommendations, that extension has passed with no response from Plaintiff. Accordingly, these recommendations will be adopted as well.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge (Dkt. No. 157), and for the reasons announced therein, enters judgment in favor of Defendant Ben Lehew and dismisses Plaintiff's Complaint as to the official capacity claims against Defendants Dale Cagle, Shawn Briley, William Hobbs, Andy Moon, Shelly Bowles, and Dennis Keller without prejudice. A judgment will enter at the close of these proceedings. This matter is re-referred to the Magistrate Judge for further proceedings in

accordance with the Court's August 22, 2006, Order of Referral and the Court's leave, granted herein, to file a second dispositive motion.

IT IS SO ORDERED this 30th day of March, 2009.



ROBIN J. CAUTHRON
United States District Judge